THE BOMBAY SMOKE-NUISANCES ACT, 1912.

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BOMBAY ACT No. VII OF 1912.[1]

[THE BOMBAY SMOKE-NUISANCES ACT, 1912].

[*27th June 1912.*]

Repealed in part by Act 8 of 1920.
Amended by Bom. 10 of 1924;
" " " 10 of 1929;
" " " 8 of 1935.
Adapted and modified by the Adaptation of Indian Laws Order in Council.
*Amended by Bom. 17 of 1945.

An Act for the abatement of nuisances arising from the smoke of furnaces in the Town and Island of Bombay and to provide for the extension thereof to other areas in the Bombay Presidency.

WHEREAS it is expedient to enact a law for the abatement of nuisances arising from the smoke of furnaces in the Town and Island of Bombay and to provide for the extension thereof to other areas in the Bombay Presidency; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Bombay Smoke-nuisances Act, 1912.

(*2*) It extends in the first instance to [2][the Greater Bombay.]

Power further to extend Act.

2. (*1*) [3][The Provincial Government] may, by notification published in the [4][*Official Gazette*] and in such other manner as [3][the Provincial Government] may determine, declare its intention to extend this Act to any specified area in the Bombay Presidency other than the Town and Island of Bombay :

Provided that, if a military cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the [5][Central Government].

(*2*) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to [3][the Provincial Government] within a period of three months from the publication of the said notification in the [4][*Official Gazette*].

(*3*) At any time after the expiration of the said period, and after considering the objections, if any, submitted under sub-section (*2*), [3][the Provincial Government] may, by notification in the [4][*Official Gazette*], extend this Act to the said area.

Definitions.

3. In this Act—

(*1*) "furnace" means any furnace or fire-place used—

(*a*) for working engines by steam, or

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1911, Part VII, page 383; for Report of Select Committee, *see ibid.*, 1912, Part VII, page 94; and for proceedings in Council, *see ibid.*, 1912, Part VII, pages 42 and 231.

[2] These words were substituted for the original by Bom. 17 of 1945 s. 9 Schedule E, read with Bom. 52 of 1947, s. 2, proviso.

[3] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[4] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

[5] The words "Central Government" were substituted for the words "Governor-General in Council", *ibid.*

* This Act has been repealed and re-enacted and the amendments made by section 9 and Schedule E of the said Act have been continued in force by Bom. 52 of 1947, s. 2.

(*b*) for any other purpose whatsoever :

Provided that no furnace or fire-place—

(*i*) used for the burning of the dead ;

(*ii*) used in a private house for domestic purposes other than the purpose specified in clause (*a*) ;

[1]* * * * * *

shall be deemed to be a furnace or fire-place within the meaning of this Act.

[2][(*1A*) "flue" or "chimney" means any "flue" or "chimney" joined to, connected with or forming part of a furnace.]

(*2*) "Inspector" means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act ;

(*3*) "the Commission" means the Bombay Smoke-nuisances Commission constituted under this Act ;

(*4*) "occupier" means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used ;

(*5*) "owner"—

(*a*) when used in reference to a furnace, [3][flue or chimney], includes any agent or lessee using the furnace, [3][flue or chimney], and any foreman or other person superintending the working of the furnace [3][flue or chimney] ;

(*b*) when used in reference to any premises, has the meaning assigned to it in section 3 of the City of Bombay Municipal Act, 1888 ; and Bom. III of 1888.

(*6*) "Magistrate" means a Presidency Magistrate, a Magistrate of the first class, or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure, 1898.

Constitution of Commission.

4. (*1*) [4][The Provincial Government] shall, by notification in the [5][*Official Gazette*], constitute a Commission, to be called the Bombay Smoke-nuisances Commission, to supervise and control the working of this Act.

(*2*) The said Commission shall consist of a President nominated by [4][the Provincial Government] and so many other members as [4][the Provincial Government] may determine.

(*3*) One-half of the members (exclusive of the President) shall be nominated by [4][the Provincial Government] ; and the remainder shall be elected, in such manner and for such period as, [4][the Provincial Government] may direct, by bodies or associations whose interests are likely to be affected by this Act ; and the appointment of all members, whether nominated or elected, shall be notified in the [5][*Official Gazette*].

(*4*) Where a casual vacancy occurs in the case of a nominated member [4][the Provincial Government] shall make a fresh nomination, and where a casual vacancy occurs in the case of an elected member the election shall be made by the same body or association as that which elected, the member whose place is to be filled ; and a member so nominated or elected shall hold office so long as the member whose place he fills would have been entitled to hold office had the vacancy not occurred.

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[1] Clause (*iii*) was repealed by s. 2 of the Bombay Smoke-nuisance (Amendment) Act, 1920 (Bom. 8 of 1920).

[2] Sub-section (*1A*) was inserted by Bom. 10 of 1929, s. 2 (*1*).

[3] The words "flue or chimney" were inserted, *ibid.*, s. 2 (*2*).

[4] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[5] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

(*5*) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in or any defect in the constitution of the Commission.

Appointment of Inspectors.

5. (*1*) [1][The Provincial Government] may, by notification in the [2][*Official Gazette*], appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors of Smoke-nuisances as they may think fit.

(*2*) Every Assistant Inspector appointed under sub-section (*1*) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.

Inspectors to be public servants.

6. Every Inspector appointed under this Act shall, for the purposes of this Act, be deemed to be a public servant within the meaning of the [3]Indian Penal Code.

XLV of 1860.

Power to prohibit the erection of kilns or furnaces, or the manufacture of coke, in specified areas; and to inflict penalties.

7. (*1*) [1][The Provincial Government] may, by notification in the [2][*Official Gazette*], prohibit within any specified area—

(*a*) the erection of brick, tile or lime kilns,

(*b*) the erection of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals or for the conversion of pig-iron into wrought iron, or

(*c*) the manufacture of coke in ovens or with special appliances, or

(*d*) the making of coke without ovens or special appliances:

Provided that where, prior to the issue of such notification, a licence has been granted by the Municipal Commissioner under the provisions of section 394 of the City of Bombay Municipal Act, 1888, for the erection of a furnace to be used for any of the purposes mentioned in clauses (*a*) and (*b*), such notification shall not affect such furnace or kiln.

Bom. III of 1888.

(*2*) If any furnace or kiln be erected in contravention of any notification issued under sub-section (*1*), clause (*a*) or (*b*), the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.

(*3*) If any person manufactures coke in contravention of any notification issued under sub-section (*1*), clause (*c*), he shall be liable to fine which may extend on first conviction to two hundred and fifty rupees, and on any subsequent conviction to five hundred rupees.

(*4*) If any person makes coke in contravention of any notification issued under sub-section (*1*), clause (*d*), he shall be liable to fine which may extend on first conviction to twenty-five rupees, and on any subsequent conviction to fifty rupees.

(*5*) If any coke is made in any building or place in contravention of a notification issued under sub-section (*1*), clause (*d*), the owner or occupier of such building or place shall be liable to fine which may extend on first conviction to twenty-five rupees, and on any subsequent conviction to fifty rupees.

(*6*) Where any coal is in process of being made or has been made into coke in contravention of a notification issued under sub-section (*1*), clause (*d*), an Inspector may seize such coal or coke, and report the seizure to a Magistrate who may, after such enquiry as he thinks necessary, order such coke or coal to be confiscated, and to be sold in accordance with rules to be made by [1][the Provincial Government] in this behalf under section 11.

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[1] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[2] The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

[3] Central Acts.

Power to order demolition of kilns or furnaces unlawfully erected.

8. (*1*) A Magistrate imposing a fine on any person under sub-section (*2*) of section 7 may by order direct such person to demolish the kiln or furnace within a period to be specified in the order.

(*2*) Any such person failing to demolish any kiln or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for reasons to be stated, allow, shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

Penalty for excessive emission of smoke.

9. (*1*) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extend on first conviction to fifty rupees, on second conviction to one hundred rupees, and on any subsequent conviction to two hundred rupees.

(*2*) Sub-section (*1*) shall not apply to any furnace which is used—

(*a*) in connection with a brick, tile or lime kiln, or

(*b*) for the purpose mentioned in clause (*d*) of sub-section (*1*) of section 7.

No furnace, etc., to be erected unless plans are approved by Commission.

[1][**9A.** (*1*) No furnace, flue or chimney shall be erected, altered, added to or re-erected except in accordance with plans approved by the Commission.

(*2*) If any furnace, flue or chimney is erected, altered, added to or re-erected in contravention of the provisions of sub-section (*1*), the owner of such furnace, flue or chimney shall be liable to fine which may extend to one hundred rupees; and, if any such furnace, flue or chimney is used without the permission of the Commission, to a further fine not exceeding twenty rupees for every day during which such use continues.]

Power to order demolition of furnace, flue or chimney unlawfully erected.

[1][**9B.** (*1*) A Magistrate imposing a fine on any person under sub-section (*2*) of section 9A may, by order, direct such person to demolish the furnace, flue or chimney within a period to be specified in the order.

(*2*) Any such person failing to demolish any furnace, flue or chimney within the period specified in the order, or within such longer period as the Magistrate may, for reasons to be stated, allow, shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.]

Powers of Inspectors.

10. (*1*) Any Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge—

(*a*) enter and inspect, during working hours, any building or place which contains a furnace, [2][flue or chimney], and inspect such furnace, [2][flue or chimney];

(*b*) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from such furnace, [2][flue or chimney]; and

(*c*) under the written authority of the Commission, direct that any such furnace [2][flue or chimney] be worked [3]* * experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purposes of the experiment.

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[1] Sections 9A and 9B were inserted by Bom. 10 of 1929, s. 3.

[2] The words "flue or chimney" were inserted, *ibid.*, s. 4 (*a*).

[3] The words "or stoked" were omitted, *ibid.*, s. 4 (*b*).

(2) If any owner of a furnace, [1][flue or chimney] in respect of which a direction is given under clause (*c*) of sub-section (*1*) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred rupees:

Provided that where any Inspector has reason to believe that any offence under sub-section (*2*), (*3*) or (*4*) of section 7 has been or is being committed on any premises it shall be lawful for him to enter on such premises without previous notice and without written authority from the Commission.

Rules.

11. (*1*) [2][The Provincial Government] may, [3]* * * * after previous publication, make rules to carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of sub-section (*1*), such rules may—

(*a*) regulate the transaction of business by the Commission;

(*b*) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties;

(*c*) prescribe a scale for the purpose of determining the density of smoke;

(*d*) prescribe the degree of density of smoke that may be emitted from a furnace;

(*e*) prescribe the time during which smoke of such density may be emitted from a furnace;

(*f*) prescribe the altitude below which smoke may not be emitted from a furnace;

[4]* * * * * * *

(*h*) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution;

[5][(*hh*) prescribe the procedure regarding the submission and approval of plan under sub-section (*1*) of section 9A.]

(*i*) fix the amount of fee payable to each or any member of the Commission attending a meeting of the Commission; and

(*j*) prescribe a procedure for the sale and disposal of the receipts of the sale of coke or coal confiscated under sub-section (*6*) of section 7.

(3) The date to be specified in accordance with clause (*c*) of section 24 of the Bombay General Clauses Act, 1904, as that after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

Bom. I of 1904.

(4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (*1*), be referred to the Commission constituted under section 4, and the rule shall not be so published until the said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

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[1] The words "flue or chimney" were inserted by Bom. 10 of 1929, s. 4 (*a*).

[2] The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

[3] The words "with the previous sanction of the Governor-General in Council and" were repealed by s. 3 of the Bombay Smoke-nuisances (Amendment) Act, 1920 (Bom 8 of 1920).

[4] Clause (*g*) was repealed, *ibid.*

[5] Clause (*hh*) was inserted by Bom. 10 of 1929, s. 5.

Cognizance of offences.

12. A Magistrate may take cognizance of an offence against this Act only—

(*a*) upon a complaint made by, [1][an inspector with the previous sanction of the Commission or of a sub-committee appointed by the Commission], and

(*b*) within a period of two months from the date of the commission of the offence.

Exercise of the powers of the Commission by the President or any member authorized by the President.

[2][**12A.** (*1*) The President of the Commission or in the event of the illness or absence of the President from Bombay any member of the Commission authorized in writing by the President in this behalf may exercise the powers of the Commission under sections 9A, 10 and 12.

(*2*) The President or member authorized under sub-section (*1*) shall report to the Commission before its next ordinary meeting any action taken by him in the exercise of the powers under section 9A, 10 or 12.]

13. [*Disposal of fines.*] *Omitted by the Adaptation of Indian Laws Order in Council.*

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[1] These words were substituted for the words " or with the written authority of, the Chief Inspector ", by Bom. 10 of 1924, s. 2.

[2] Section 12A was inserted by Bom. 8 of 1935, s. 2.

BOMBAY ACT No. XII OF 1912.[1]

[THE BOMBAY ABKARI (AMENDMENT) ACT, 1912.]

[*7th September 1912.*]

An Act further to amend the Bombay Abkari Act, 1878.[2]

Bom. V of 1878.

WHEREAS it is expedient further to amend the Bombay Abkari Act, 1878, in manner hereinafter appearing;

And whereas the previous sanction of the Governor General required by section 5 of the Indian Councils Act, 1892, has been obtained for the passing of this Act; It is hereby enacted as follows:—

1-41. [*Amendments made by sections 1 to 41 have been incorporated in the principal Act.*]

XVI of 1863.

42. "The Excise (Spirits) Act, 1863," shall be repealed as to the Presidency of Bombay. **Local repeal of Act XVI of 1863.**

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1912, Part VII, page 127; for Report of Select Committee, *see ibid.*, 1912, Part VII, page 405; and for Proceedings in Council *see ibid.*, 1912, Part VII, pages 259, 500 and 664. The short title was given by Bom. 2 of 1921.

[2] This Act except section 29A has been repealed by Bom. 25 of 1949.